IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 43 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

JITENDRA VALLABHBHAI MAKWANA

Appearance:

MR KG SHETH, APP for Petitioner

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/08/2000

C.A.V.JUDGMENT

While hearing Special Civil Application No.3708 of 1998, Hon'ble Mr. Justice M.R.Calla has exercised powers of suo motu conferred under Section 401 of Criminal Procedure Code and called for the records of proceedings pending before the Judicial Magistrate First

Class, Rajula for examining the correctness, legality and propriety of these proceedings and the order passed therein for suo motu exercise of revisional powers of this court under Section 397 of Criminal Procedure Code for the purpose of adequacy for the offence under Sections 406, 420 read with 34 and 114 of the Indian Penal Code and etc. and also directed the office to put a copy of the order along with the copy of the complaint No.56/96 and place before this Bench (before him) or before the Bench hearing Criminal Revisions as may be directed and permitted by the Hon'ble Chief Justice for taking further appropriate action in exercise of the powers under relevant provisions of Cr.P.C. As per the order passed by the Court (M.R.Calla, J.) the said suo motu proceedings has been registered as Criminal Revision Application No.43 of 2000 and placed before this Court.

2. Special Civil Application 3708 of 1996 has been filed by accused No.1 of Criminal case No.56/96, namely Minaxiben Zaverbhai Jethva, who was working as a nurse at Community Health Center, Rajula, Dist : Amreli,since 1992. On 29-10-96, a criminal case No.59/96 was filed by one Jitendra Vallabhbhai Makwana, resident of Rajula, against Minxaiben Zavebhai Jethva and her mother for the offence under Section 420, 406, read with Sections 34 and 114 of the Indian Penal Court, directly into the Court of learned J.M.F.C., Rajula. On receiving the same, learned J.M.F.C., Rajula, passed an order under Section 156 () of the Code of Criminal Procedure and directed the police authority to investigate the matter and submit the report within a stipulated time and on receiving the same, the Investigating Officer started the investigation. During the course of investigation, said Minaxiben was brought from Bahucharaji to Rajula Police Station on 18th September, 1997, and on 19th September, at 10-30 o'clock she was produced before the learned J.M.F.C., Rajula, and thereafter, on 20th September, 1997, she was released on bail. Again on 6th October, 1997 to 8th October, 1997, she was taken on remand and as she remained in custody for a period more than 48 hours, according to the authority it is a case of deemed suspension under Rule 5 (2) of the Gujarat State Civil Services (Discipline & Appeal) Rules, 1971, and therefore, the authority passed the order and put Minaxiben under suspension. Therefore, Minaxiben filed Special Civil Application No.3708 of 1998. At the time of finally disposing of Special Civil Application NO.3708 of 1998, the Court (Coram : M.R.Calla, J.) has exercised the powers of suo-motu conferred under Section 401 of Criminal Procedure Code and to call for and examine the records of proceeding pending before the Judicial Magistrate First Class,

Rajula, for examining the correctness, legality and propriety of these proceedings and the order passed therein for suo motu exercise of revisional powers of this court under Section 397 of Code of Criminal Procedure for the purpose of adequacy for the offence under Section 406, 420 read with 34 and 114 of the Indian Penal Code and etc. and also directed the registry to place the copy of the order passed in Special Civil Application No.3708 of 1998 along with the copy of the complaint No.56/96 and place before this Bench (before him) or before the Bench hearing Criminal Revisions as may be directed and permitted by the Honourable Chief Justice for taking further appropriate action in exercise of the powers under relevant provisions of Cr.P.C. Thereafter, this matter has been put before this Court and on 4-2-2000 this Court issued Rule making it returnable on 14-2-2000. After service of rule, learned A.P.P. Mr. K.G.Sheth appeared on behalf of the State and learned advocate Mr. Y.S. Lakhani appeared on behalf of the complainant.

3. I have heard learned counsel for the respective parties. I have also gone through the record and proceedings. The following facts emerge from the case of the prosecution.

4. The complainant Jitendra Vallabhbhai Makwana, resident of Rajula, Dist : Amreli, and who is a married man and having three children aged 16, 14 and 12 respectively in the year 1996 had come in contact with accused No.1-Minaxiben Zaverbhai Jethva, who was working as a nurse at Community Health Center at Rajula since 1992 and while she was working at Rajula, she came in contact with the complainant-Jitendrabhai and as a result of it, Minaxiben entered into a friendship agreement (Maitrikarar) and they started to live extramarital life and according to the complainant, the complainant gifted so many household articles to the accused No.1 as demanded by her. As per the say of the complainant over and above, he also paid cash amount of Rs.65,000/- to the accused No.1 for the purpose of purchasing house at Ahmedabad and for the purpose of paying premium of insurance policy and she had not returned the said articles and amount and thereafter, the complainant started to live separately. Therefore, the complainant lodged a criminal case against the accused No.1-Minxaiben and her mother directly into the Court of learned J.M.F.C., Rajula, for the offence under Sections 406, 420 read with 34 and 114 of the Indian Penal Code, wherein on 29-10-96 the Court has passed the order under Section 156 (3) of Cr. P.C. and directed the police authority,

Rajula to investigate the matter and submit report within a stipulated time. Thereafter, the police authority started investigation and during the course of the investigation, the accused No.1-Minaxiben was arrested and released on bail. Thereafter, also she was taken on remand and at the end of investigation charge sheet has been filed and now the matter is pending in the Court of learned J.M.F.C., Rajula as a part-heard matter.

5. I have heard learned advocate Mr. Y.S.Lakhani for the complainant and learned A.P.P. Mr. K.G.Sheth, for the respondent-State. Learned advocate Mr. Y.S.Lakhani has mainly argued that this is not a fit case wherein the complaint is required to be quashed at this stage because the police has investigated the matter and submitted the charge sheet in the Court, and therefore, there is prima facie case against the accused and this Court should not interfere at this stage. He has also argued that the articles which have been given by the complainant to accused No.1 as demanded by him and though they have started to live separately, the articles and amount have not been returned back to the complainant, and therefore, ingredients of the offence as mentioned in the F.I.R. have been established. I have gone through the complaint and other documents shown to me by learned counsel appearing for the respective parties. It is established from the record and proceedings and from the complaint that whole base of the complaint is the articles which have allegedly been given by the complainant to accused No.1 during their extramarital life and according to the complainant as the extramarital relation came to an end and they started to live separately, the articles and amount are required to be returned back to the complainant.

6. On the other hand, as per the say of the accused No.1, all the articles are belonging to her and also the same are in her own name as she is serving as a nurse and getting a handsome salary. Whereas, it is argued by learned counsel for the the complainant that the articles are purchased by the complainant in the name of accused No.1. So, at the most, it is a civil dispute between the parties and question of cheating or misappropriation does not arise. In this case, if we accept that the complaint is true one, then also it does not disclose the ingredients of Section 406, 420 read with 34 and 11 of the Indian Penal Code. It may be noted that merely because the complainant and accused No.1 entered into some friendship agreement to live extramarital life for some period and thereafter, the accused No.1 refused to continue extra marital relation with the complainant, and

therefore, the complainant with a view to pressurize the accused No.1 filed the present complaint which is nothing but abuse of process of law alleging that had the assurance not been given by the accused No.1 to him, he would not have gave articles and amount as mentioned in the complaint to the accused No.1. Therefore, if it is believed that the complainant gave household articles and amount as alleged in the complaint to the accused No.1, it cannot be said that ingredients of Sections 406, 420 read with Sections 34 and 114 of the Indian Penal Code are attracted. At the most it is a simple case of civil wrong against the complainant, and therefore, the complaint and the process issued thereof are required to be quashed and set aside.

7. I fail to understand as to why these type of cases which are nothing but abuse of process of law are being entertained by the Courts below mechanically though time and again this Court had issued directions that the Courts below should be much more vigilant while issuing process in these type of cases.

8. In view of the aforesaid discussion, this petition is allowed. The complaint being Criminal Case No.56/96 is hereby quashed and set aside. Rule is made absolute.

(R.P.Dholakia, J.)

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